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FREEDOM MORTGAGE CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

IRWIN UNION BANK AND TRUST
COMPANY and IRWIN HOME EQUITY
CORPORATION,

Plaintiffs,

vs.

FREEDOM MORTGAGE CORPORATION,

Defendant.

No.: C 08-00472 PJH

Action Filed: January 22, 2008

**NOTICE OF MOTION AND
MOTION OF DEFENDANT
FREEDOM MORTGAGE
CORPORATION TO DISMISS OR
STAY ACTION AND FOR AN
ORDER COMPELLING
ARBITRATION
[FRCP RULE 12(b)]
[9 U.S.C. §§ 3-4]**

Date: April 16, 2008

Time: 9:00 a.m.

Courtroom: 3

Judge: Phyllis J. Hamilton

¹ Application for admission *pro hac vice* pending.

PLEASE TAKE NOTICE that on April 16, 2008, at 9:00 a.m., or as soon thereafter as this matter may be heard in Courtroom 3 of the above-entitled Court located at 450 Golden Gate Ave., San Francisco, California 94102, Defendant FREEDOM MORTGAGE CORPORATION ("FREEDOM") will and does hereby move the Court for an order (1) dismissing this action with prejudice or, in the alternative, staying this action pending the completion of the binding arbitration, and (2) compelling Plaintiffs IRWIN UNION BANK AND TRUST COMPANY and IRWIN HOME EQUITY CORPORATION (the "IRWIN ENTITIES") to arbitrate all causes of action alleged in their Complaint against FREEDOM, filed on January 22, 2008.

This motion and petition are made pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Sections 3 and 4 of the Federal Arbitration Act (9 U.S.C. §§ 1-16) and the California Arbitration Act (Cal.C.Civ.Pro. §§ 1280-1294.2), on the grounds that the claims in this action relate to a contract, to which the IRWIN ENTITIES and FREEDOM are parties, and which contains a valid and enforceable arbitration clause estopping the IRWIN ENTITIES from avoiding arbitration by bringing this suit against FREEDOM for claims relating to that contract.

This motion and petition is based on this notice and motion, the concurrently filed memorandum of points and authorities, declaration of David Altman and exhibits thereto, the pleadings and records on file herein, and such other and further argument as may be presented and allowed by the Court at the time of the hearing.

Dated: March 12, 2008

BUTY & CURLIANO, LLP

By: 

KHALED TAQI-EDIN

Attorneys for Defendant

FREEDOM MORTGAGE CORPORATION